

From: Barnett, Wayne
To: Durkan, Jenny; Harrell, Bruce; Herbold, Lisa; Sawant, Kshama; Johnson, Rob; Juarez, Debora; O'Brien, Mike; Bagshaw, Sally; Mosqueda, Teresa; Gonzalez, Lorena
Cc: Holmes, Peter; Robinson Slote, Dana; Formas, Stephanie; Warner, Ian
Subject: Advice re EHT referendum
Date: Friday, May 25, 2018 10:38:01 AM
Attachments: [Advice re EHT referendum.pdf](#)

Dear Mayor Durkan and City Councilmembers,

Here is a brief overview to assist you as you go about navigating your communications about the EHT now that referendum proponents are gathering signatures.

As always, please let me know if you have any questions.

Enjoy the holiday weekend.

Best,
Wayne

Wayne Barnett

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City of Seattle

Ethics and Elections Commission

May 25, 2018

Mayor Jenny Durkan
City Councilmembers
City Hall
Seattle, WA 98104

Dear Mayor Durkan and Members of the City Council:

With referendum proponents gathering signatures to repeal the Employee Hours Tax (EHT), the Elections Code's bar on use of City resources to promote or oppose the referendum is in full force. I wanted to briefly remind you that we customarily receive an inordinate number of complaints during the election season alleging that City facilities have been misused for election purposes. It is the long-standing practice of the SEEC to resolve alleged violations of SMC 2.04.300 *before* the election in question, so if there are violations they will almost certainly be resolved in the heat of the campaign, not afterwards.

Here is some guidance on complying with the law that was provided by the Ethics and Elections Commission in the 2005 case involving an election-year distribution of a document detailing the then-Mayor's three years of accomplishments:

- The question is “whether, to a reasonable person, the [use of facilities] appears PRIMARILY designed to influence the outcome of an election, or PRIMARILY designed to be informational with only an incidental effect of” promoting or opposing a candidate or ballot proposition.
- “Among the factors to be considered when a message is conveyed at public expense are the tone (style), the tenor (content), the timing (in relation to the events occurring during an election cycle), and the audience to which a message is distributed.”
- “Whether a use of facilities is ‘for the purpose of assisting a campaign’ is determined objectively, and there is no need to prove or determine the subjective mental state (actual intent) of any person.”

I have advised that *promoting* the EHT cannot be decoupled from *opposing* the referendum, and so any promotion of the EHT must end until this referendum either (a) fails to gather the requisite signatures, or (b) is voted on in November. I suspect that some of you may not be happy with that advice, so I do want to underscore that if you would like to request an opinion from the full SEEC, I would be happy to put that opinion request before them as quickly as possible.

Please keep in mind that there is an exception in the law for “[a] statement by an elected official in support of or in opposition to any ballot proposition at an open press conference or in

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response to a specific inquiry." The Elections Code does not require you to be unresponsive to your constituents.

If you ever have any questions about the legality of a message that you are preparing to distribute, please do not hesitate to contact me.

Very truly yours,



Wayne Barnett
Executive Director

cc: Pete Holmes, City Attorney
Dana Robinson-Slote, City Council Communications Director
Stephanie Formas, Mayor's Office Communications Director